RSA 42/2002
BEFORE
THE HON'BLE MR. JUSTICE N.KOTISWAR SINGH

Heard Mr. G.P. Bhowmik, learned counsel appearing for the appellant and Ms. D. Sinha learned counsel appearing for the respondents.

[2] The present second appeal has been preferred against the judgment and decree dated 12.9.2001 passed by the learned District Judge, Tinsukia, in Title Appeal No.3 of 2000 dismissing the appeal and upholding the judgment and decree of the Title Suit No. 8/94 passed by the learned Civil Judge (Junior Division), Tinsukia.

[3] The facts of the case as may be relevant for the purpose of the present second appeal may be stated as follows.

[4] The plaintiffs, namely, Shri Puspadhar Baruah (plaintiff No.1) and Smt. Niroda Gogoi, (plaintiff No.2) had filed a suit for declaration of right, title and interest over the suit land and for confirmation of possession over the suit land alternatively for delivery of khas possession.

[5] The plaintiffs state that the plaintiff No.1 had purchased the suit land from one Sri Siba Nath Sharma (proforma Defendant No. 2) by a registered sale deed on 22.8.77 after obtaining necessary permission from the authorities and took possession thereafter. The said Sri Siba Nath Sharma had purchased the said suit land from Smt. Jina Gohain, the proforma Defendant No. 3 and appellant herein vide registered sale deed in the year 1975 and thereafter, he was in possession of the suit land till he sold the same to the plaintiffs, as stated above.

[6] The plaintiffs state that they continued to be in peaceful possession of the suit land having a kutcha construction and some trees standing thereon and by paying land revenues. After purchasing the said suit land from Sri Siba Nath Sharma as stated above, the plaintiffs got the suit land mutated in their names in the records of right. Smt. Jina Gohain (the proforma Defendant No. 3) retained possession of the land on the east of the suit land and her father, the Defendant No. 1 stayed with her in the said eastern portion of the land to the suit land. The plaintiffs claimed that on 18.5.87 in the night, the Defendant No.1 (father of Smt. Jina Gohain) trespassed into the suit land and removed the four concrete posts standing on the boundary of the suit land and planted banana plants and started fencing the suit land with old bamboo sticks. When the plaintiff No.1 came to see the suit land, seeing the illegal activities of Defendant No.1, she reported the matter to the Tinsukia Police Station and the police after registering a case, arrested the Defendant No.1. The plaintiff also instituted a case u/s 141 Cr.P.C. on 20.5.87 and the Additional District Magistrate promulgated order prohibiting the Defendant No.1 from entering the suit land. The Defendant No.1 filed a revision petition being Criminal Revision No.64(2)87 before the learned District & Sessions Judge, which was also dismissed. However, inspite of the prohibitory order, the Defendant No. 1 did not refrain from his illegal activities and again on 8.6.87 obstructed the plaintiffs from entering the suit land and on 4.7.87. The plaintiffs also found that the strip of little high land demarcating the boundary of the suit land from the land belonging to the Defendant No.3 was removed without any trace by the Defendant No.1 and the Defendant No.1 threatened them with dire consequences if they visited the suit land again, which led to certain proceeding before the S.D.M(E) Tinsukia. Subsequently, the plaintiffs were compelled to file the present suit to claim their title over the suit land and for khas possession and permanent injunction.

The Defendant No. 1, the father of Smt. Jina Gohain and the Defendant No. 3, Smt. Jina Gohain, separately contested the suit by filing their res

pective written statements. The Defendant No. 1 resisted the suit by stating tha t the suit is barred by limitation and denied that the suit land was ever sold t o Defendant No. 2 (Siba Nath Sharma) by Smt. Jina Gohain and that the Defendant No.1 had been in possession of the suit land for more than 15 years without int erference from any quarter. The Defendant No. 1 also denied that the Defendant N o. 2 (Siba Nath Sharma) was in possession of the suit land at any point of time.

[7] Defendant No. 3, Smt. Jina Gohain, in her written statement deni ed the execution of the aforesaid registered sale deed in favour of the Defend ant No. 2, Siba Nath Sharma and stated that the registered sale deed No.1771 of 1975 was false and fabricated. The Defendant No. 3 also stated that in the year 1975, her father had forcibly trespassed and dis-possessed her from the suit lan d and inspite of her request, did not vacate the land. However, she did not take any action against him as he was her father. Accordingly, she prayed for dismis sal of the suit and to declare the registered sale deed No.1771/1975 purportedl y executed in favour of the Defendant No. 2 and the subsequent registered sale d eed No.1311/1977 executed by the Defendant No. 2 in favour of the plaintiffs as null and void.

As many as 10 issues were framed, of which Issue Nos. 6 and 7 ar e relevant for the purpose of the present appeal and reproduced hereinbelow:-

6. Whether the defendant No.3 sold the suit land to defendant No.2 vide sale de ed No.1771 of 1975 and if so, whether the plaintiff acquired ownership over the suit land by the sale deed No.1311 of 1977?

7. Whether the defendant No.1 is in continuous possession of the suit land since 1975 and whether he has right to posses the suit land?

[8] The learned Trial Court, after considering the evidence on recor d, held that the suit land was sold by Smt. Jina Gohain, the Defendant No. 3 to Sri Siba Nath Sharma, the Defendant No.2 in the year 1975 by a registered sale deed. The learned Trial Court also held that the Defendant No.2, who was in poss ession of the suit land since 1973 till 1979 and was the lawful owner of the sui t land, after purchased by registered sale deed from the Defendant No.3 and muta ted his name in the records of right. The learned Trial Court also held that sub sequently the said suit land was sold by Defendant No. 2, Sri Siba Nath Sharma to the plaintiffs in the year 1977 by a registered sale deed and accordingly, d ecreed the suit by holding that the plaintiffs are entitled for declaration of r ights and title and decreed the suit in favour of the plaintiffs in the said Tit le Suit No.8 of 1994 vide judgment and decree dated 24.1.2000.

[9] Against the aforesaid judgment and decree dated 24.1.2000 passe d by the learned Trial Court, the Defendant No.3 filed an appeal before the lear ned District Judge, Tinsukia. The learned Appellate Court dismissed the appeal a nd affirmed the judgment and decree dated passed by the learned Civil Judge (J r.Divn.), Tinsukia, vide judgment and order dated 12.9.2001 passed in Title Sui t No.8/94.

[10] Against the aforesaid dismissal order dated 12.9.2001, the Defen dant No. 3 has filed the present second appeal. This Court while admitting the second appeal had framed three substantial questions of law on 03.4.2002 as fo llows :-

i) Whether the finding of the learned Courts below that the sale deed Ext.2 was shown to have been proved was correct in law when Defendant No.3 had denied the execution of the sale deed and the scribe and the attesting witness had not bee n examined on behalf of any of the parties?

(ii) Whether from the mere fact of registration of the sale deed, Ext. 2, the C ourt can on the basis of the provision of Section 60 of the Registration Act, 19 08 treat the sale deed Ext. 2 as proved?

(iii) Whether the learned courts below have ignored altogether the material fact

s relating to proceeding U/s.447 IPC and U/s. 145 Cr.PC involving the plaintiff and the defendant No.1 while recording the finding that the defendant No.1 was n ot in adverse possession in respect of the suit land for 12 years?

[11] Learned counsel appearing for the appellant submits that the exe cution of the registered sale deed (Ext.2) by which the suit land was said to ha ve been sold by the appellant in favour of the Defendant No. 2 in the year 1975 cannot be said to have been proved in absence of examination of either the scri be or the attesting witness in view of the fact that the appellant had specifica lly denied the execution of the same as required under Section 67 of the Evidenc e Act. In this connection, learned counsel appearing for the appellant had reli ed on the following judgments rendered in Lourembam Heramot Singh -vs- Laisram A ngahal Singh & ors, reported in AIR 1979 Gauhati 68, Bhaiyalal -vs- Ram Din, re ported in AIR 1989 Allahabad 130, Bhutkani Nath & ors. -vs- Mt. Kamaleswari Nath & anr. reported in AIR 1972 Assam and Nagaland 15 (V.59 C6), P.G.D' Ombrain & ors. etc., -vs- Collector of Kamrup Gauhati & anr. etc.. reported in AIR 1980 Gauhati 55 Bhaskar Sahu-v- Anama Swara & ors. reported in AIR 1987 Orissa 138.

[12] The appellant therefore submits that in the present case, since neither the scribe nor the attesting witness of the aforesaid sale deed execute d in the year 1975 was examined, it cannot be said that the aforesaid sale deed allegedly executed by the Defendant No. 3 in favour of the Defendant No.2 has been proved.

[13] The learned counsel appearing for the appellant, therefore, subm its that in view of the fact that the said registered sale deed stated to have been executed by the appellant in favour of the Defendant No.2 was not proved, t he Defendant No.2 had no right and title over the suit land and could not have sold the same to the plaintiff and as such, the sale deed executed by the Defen dant No.2 to the plaintiff cannot be acted upon.

[14] As regards this sale deed executed in 1975 by the appellant in f avour of the Defendant No.2 which is the bone of contention between the rival pa rties, we may refer to the observations and findings as regards the same by the learned Trial Court.

[15] The learned Trial Court referred to the documents in the Crimina l Revision No.64(2) of 1987 filed by the Defendant No. 1 before the District & S essions Judge challenging the order dated 25.5.87 and 6.3.87 passed by the SDM, Tinsukia in Misc. Case No.147/87 prohibiting the defendant from entering into th e suit land. In the said Cril. Revision No.64(2)/87, the Defendant No.1 himself had exhibited a number of documents. It has been observed by the learned Trial C ourt that in one such documents, petition dated 26.5.87, it appears that the Def endant No.1 and the proforma Defendant No. 3 admitted the sale of the suit land to Sri Siba Nath Sharma, Defendant No.2 by Smt. Jina Gohain in 1975 though the d elivery of possession was denied. Thus, according to the learned Trial Court, th is express admission of Defendant Nos.1 and 3 admitting the sale of land to Sri Siba Nath Sharma in the said document is a strong substantive evidence regarding the execution of sale deed No.1771/1975 by Smt. Jina Gohain, the Defendant No.3 in favour of the Sri Siba Nath Sharma, Defendant No. 2. The learned Trial Court also noted the answer given by Smt. Jina Gohain during her cross-examination th at she had no knowledge whether at the time of execution of the Exht.-2 (i.e. th e sale deed of 1975), the Sub-Registrar took her thumb impression or not, whic h impliedly means that she had exhibited the sale deed. The learned Trial Court also observed that the answer given by Smt. Jina Gohain that, it was not a fact that when she went to the Sub-Registrar Office to sell the land, her father als o went with her, also implies that she had sold the land to Sri Siba Nath Sharma . The learned Trial Court also observed that Smt. Jina Gohain denied her own sig nature in the written statement which was filed by her, which clearly indicates that she was a tutored witness to deny the signature in the Exbt.-2. The learned

Trial Court also observed that Nilakanta Gohain, the Defendant No. 1, in his written statement did not specifically deny the averment of the plaint in para No. 3 that he witnessed the execution of the sale deed executed by his daughter, Smt. Jina Gohain and that he identified Smt. Jina Gohain before the Sub-Registrar. He merely gave his reply in para No.3 of the written statement that the statement made in para 3 of the plaint is not within his knowledge. The learned Trial Court held that it was not a total specific denial but rather an evasive denial and held that as provided under Rule 5 of Order VIII of CPC , if averments are not specifically denied, they must be deemed to have been admitted and to say that the Defendant No.1 did not have any knowledge of the fact regarding his presence at the time of execution and identification does not amount to denial of the aforesaid particular fact averred in the plaint and accordingly, the learned Trial Court was of the view that the aforesaid fact pleaded in para No.3 of the plaint must be deemed to have been admitted by the Defendant No.1.

[16] We will now examine what the Appellate Court had stated regarding the aforesaid issues.

The learned Appellate Court, as regards the execution of the aforesaid sale deed of 1975 observed and held as below.

The learned Appellate Court observed that the Defendant No. 2 as a purchaser of the suit land was present at the time of execution of the sale deed/ document which the Defendants No.1 and 3 did not deny. The P.W. No. 2 (Defendant No.2, Siba Nath Sharma) had testified to the presence of Defendant Nos. 1 and 3 before the Sub-Registrar and proved their signatures, which were exhibited as Ext.2(1) to 2(9). The Ext. 2(12) and 2(14) were the signatures of the attesting witnesses as well as the scribe who was an advocate of repute and the Appellate Court held that even if the scribe and attesting witnesses were not examined, in view of the evidence of the P.W.No.2, the purchaser, as stated above, the sale deed can be said to have been proved in accordance with the provisions of Section 67 of the Evidence Act.

[17] The learned Appellate Court also referred to the findings of the learned Trial Court regarding the document i.e. petition dated 26.5.87 filed by the Defendant Nos. 1 and 3 in the Cril. Revision No.64(2)/87 in which it was stated in para no.3 of the said application that though the land was sold in 1975 to Sri Siba Nath Sharma, possession of the same was not delivered to him. Therefore, the learned Appellate Court also held that since the said document was filed by the Defendant Nos. 1 and 3 themselves, there is at least admission to the extent that the land was sold in 1975 to Sri Siba Nath Sharma, the Defendant No.3 though delivery of possession was denied. The learned Appellate Court also observed that when the Ext.2 was exhibited in evidence as Ext.2 through Defendant No. 2, no objection was raised by any of the Defendants, therefore, since the document was admitted, its content also would stand admitted. It was never suggested to PW-2, Sri Siba Nath Sharma during the cross-examination by the PW-1, the Defendant No.1 that the Ext.2 is a forged document. Accordingly, the learned Appellate Court also held that the execution of the Ext.2 is proved and consequently, the good title passed through Ext.2 in favour of the Defendant No. 2 and consequently, through Ext.1, the Defendant No.2 Sri Siba Nath Sharma transferred his title over the suit land in favour of the plaintiffs.

[18] As regards the third substantial questions of law framed regarding the issue of adverse possession claimed by the Defendant No. 1 in respect of the suit land, we may refer to the observations and findings of the learned Trial Court in this regard.

The learned Trial Court observed that after the Defendant No. 2 purchased the suit land from the Defendant No. 3, he dug up a boundary drain between the suit land and the land belonging to Defendant No.1, which was admitted by the Defendant witness, DW-2.

(i) The learned Trial Court also observed that the statement of the DW-2 in the cross-examination that he did not know when the house which

was constructed over the suit land broke down and also he did not know who resided in the house, would indicate that there was a house over the suit land.

(ii) The learned Trial Court also found that the land revenue documents Ext.11-15 showed that the land revenue for the period 1972-1977 regarding the suit land was paid by the Defendant No. 2, Sri Siba Nath Sharma and his name was mutated in the records of right on 5.8.87 and a copy of the Zamabandi was exhibited as Ext.4. The learned Trial Court also observed that even though the Defendant No. 1 claimed possession of the suit land since 1975, not a single revenue receipt was produced by him to show that he had paid the land revenue.

(iii) The Defendant No. 3, during the cross-examination, admitted that she does not know who is in possession of the suit land and also which one is the suit land.

(iv) The learned Trial Court also pointed out to certain contradictions and inconsistencies. Defendant No. 1 in the written statement claimed that he was in possession of the suit land since 1975 by planting trees but in his evidence, claimed that he was in possession of the suit land since 1970 after the date of purchase from the original owner.

Though the Defendant No. 3 states in her written statement that in the year 1975 her father had forcibly dispossessed her from the suit land, in her testimony, she states that after her marriage, which was performed in 1973/74, her father kept the land for himself.

In view of the above evidence and other evidence on record, the learned Trial Court held that the claim of the Defendant No. 1 that he was in possession of the suit land since 1975 is not proved.

[19] We may now refer to the findings of the learned District Judge in this regard.

The Defendant No. 2 after purchase of the suit land from the Defendant No. 3 lived there with his family and in 1977 because of his shifting to Guwahati, he sold the land to the plaintiffs and delivered possession to them. The plaintiffs also adduced evidence through PW Nos. 3 and 4 to the effect that PW-4 lived in the suit land for 6 years and PW-4 is a tenant in one part for one year. PW-2 also had divulged that he had seen one boundary drain dug in between the compound of the Defendant No. 1 and the suit land which proves the case of the plaintiffs.

[20] As regards the claim of adverse possession, the claim is to be against the true owner but the title in respect of the suit land was denied in the year 1987 when litigation started between the parties and the Defendant No. 1 had nothing to establish that he had been possessing the suit land adversely against the interest of the true owner. The learned Appellate Court also observed that there is no material to find that the mutation of the suit land in favour of the Defendant No. 2 or the plaintiffs was challenged by the Defendant No. 1 and the registered sale deed was also never challenged by the Defendant No. 3 and accordingly, the learned Appellate Court was also of the view that the claim of the Defendant No.1 for adverse possession is not proved.

[21] Heard the learned counsel appearing for the parties. The main contention of the appellant is that the documents exhibited as Ext.2, the sale deed, which was executed by the Defendant No. 3 in favour of the Defendant No.2 was not proved inasmuch as neither the scribe nor the attesting witnesses were examined and merely because of the fact that the said document was a registered will not, ipso facto proved in view of the specific denial by the Defendant No.3.

[22] To press home his arguments, the learned counsel appearing for the appellant has relied on the judgments as mentioned above.

In the case of Lourembam Heramot Singh (supra) , this Court had held that though the certified copy of a document is as good as the original and correctness of a certified copy is presumed, mere registration is not a proof of its execution. Execution and contents of a certified copy must be proved acco

rding to law in the ordinary way. The mere proof of admission of execution befor e the Registrar does not satisfy the requirements of Section 67 of Evidence Act which requires that the signature of the executant must be proved in his handwri ting. More than a mere admission of a signature is needed to amount to admission of execution of a document.

However, the Court also held that there must be some evidence to show that the execution and genuineness of a document were proved.

In the present case, as discussed above, even though the scribe and attesting witnesses were not examined, there were other evidence to show th at the said document Ext.2 was executed. Therefore, mere non-examination of the scribe and attesting witness would not render the said document, Ext.2 to not ha ve been proved in view of the fact that there are other evidence on record to pr ove its execution.

In the case of Bhaiyalal (supra), the Court held that merely be cause of fact that the document had been exhibited, it does not follow that the Court stands precluded from examining the question on the basis of the evidence led by the parties whether the document in question was executed by the party b y which it purports to have been executed. The fact that document is exhibited only establishes that it has been formally proved. But where the execution of t he document is challenged, a Court of fact is clearly entitled to weigh the evid ence led by the parties to find out whether the document was really executed by the party who is alleged to have executed the same. The lower appellate Court wa s, therefore, entitled to draw adverse inference against the plaintiff-appellant from his failure to examine the scribe and the witnesses of the deed.

In the present case, as discussed above, even though the scribe and attesting witnesses were not examined, there are other evidence on record, a s discussed above, to show that the said document was executed.

Coming to the case of Bhutkani Nath (supra), this Court held t hat when the execution of a document is challenged, the certificate of registra tion alone will not be sufficient to proof of the due execution of the document.

In the present case, there are other admissible evidences on rec ord other than the registration.

In the case of P.G.D’ Ombrain (supra) , the Court in the said c ase was dealing with a case where no witness was examined for examination of pr oof of document relied by the claimant and accordingly, held that mere marking of an exhibit does not dispense with the proof of documents, which, however, is not the case in the present case, as there are other evidence on record, as disc ussed above.

As regards the case of Bhaskar Sahu (supra), the Court observe d that from the evidence on record the Court did not find that plaintiffs had a dduced any evidence explaining the reasons for non-production of the original sa le deed, even though objection was taken to its admissibility at the time when t he certified copy is sought to be introdcued in evidence. In the said case, the certified copy of the sale deed was tendered in evidence through P.W.-1 and in the deposition recorded, the certified copy of the sale deed was mentioned to have been marked as Ext.1 with objection.

In the present case, position was different. When Ext.2, the s ale deed of 1975, was exhibited through PW-2, the same was not objected to, as a lready observed by the learned Appellate Court below.

[23] It would have been entirely different matter if there were no other evidence. Apart from the production of the certified copy of the sale d eed, Ext.2 and in absence of any other evidence to support the execution of the same, without examining the scribe or attesting witnesses, the Court perhaps cou ld have come to a conclusion that the sale deed was not executed. However, in the present case, as discussed above, there were other evidences which would sho w the execution of the said sale deed.

[24] Both Courts below had, on the basis of the petition dated 26.5.8

7 filed by the Defendant No. 1 in connection with Criminal Revision proceeding b
efore the court of Sessions Judge, had taken due note of the averments made by t
he Defendant No. 1 in para No.3 of the said petition that the suit land was sold
to Sri Siba Nath Sharma, Defendant No.2, though denying delivery of possession
to him. The aforesaid petition dated 26.5.87 was a document exhibited by the Def
endant Nos. 1 and 3 themselves which was filed by the Defendant No.1 before the
Sessions Court in the aforesaid proceedings which shows clear admission on their
part that the land was sold to Sri Siba Nath Sharma in 1975.

& & &. The Court below has also discussed the other circumstances and consider
tion of the material on record, I find one such circumstance relevant to be ment
ioned here. Admittedly the parties fought several criminal proceedings of 144, 1
45 Cr.P.C. and 447 I.P.C. and the defendant No.1 with prayer in the trial Court,
got one such record called from criminal Court and made the whole record as Ext
.Sha. This is the record of the Criminal Revision No.64(2)87. Since the defendan
t No.1 himself brought the said record and made whole record as Ext.Sha in this
case, the Court below has rightly considered the said record and found one petit
ion dated 126.5.87 filed by Smt.Jina Gohain (Defendant No.3) and Nilakant Gohain
(defendant No.1) in Case No.147/87 and in the said petition, it was stated in p
aragraph 3 that though the land was sold in 1975 to Siba Nath Sharma, the posses
sion of the same was not delivered to him. So in the said petition the sale was
admitted and I also find some supportive argument from the Ld. Advocate for the
appellants, submitting that sale deed even if proved, there is proof of Delivery
of possession and as such it can not be accepted that the plaintiffs ever exerc
ised possession over the suit land. The Court below has rightly considered the m
atter found in Ext. Sha (case record) and accepted this as circumstantial eviden
ce which clearly establish that the suit land was sold by Defendant No.3 in favo
ur of Siba Nath Sharma.

In the teeth of such document by which the Defendant No.1 had st
ated to have sold the suit land to the Defendant No. 2, the absence of examinati
on of the scribe and attesting witnesses may not be fatal.

[25] It may be also observed that the Defendant No. 2 who purchased t
he land from the Defendant No. 3 was examined and perusal of his deposition bef
ore the Court does not indicate that his statement before the Court was not reli
able or untrustworthy when he had clearly stated about the execution of the sa
le deed by Defendant No. 3 before the office of the Registrar and also the prese
nce of Defendant No. 1 who identified the Defendant No.3 at the time of executio
n of the sale deed. No attempt was made in the cross-examination of the Defendan
t No. 2 by the Defendant Nos. 1 and 3 to discredit the evidence about the execut
ion of the said sale deed in 1975.

[26] Section 67 does not lay down any particular mode of proof for pr
oving that a particular writing or signature is in the hand of a particular pers
on. Thus, the signatures may be proved in any one or more of following modes:-
(i) By calling the person who signed or wrote a document;
(ii) By calling a person in whose presence the documents are signed or written;
(iii) By calling handwriting expert;
(iv) By calling a person acquainted with the handwriting of the person by whom t
he document is supposed to be signed or written;
(v) By comparing in Court, the disputed signature or handwriting with some admit
ted signatures or writing;
(vi) By proof of an admission by the person who is alleged to have signed or wri
tten the document that he signed or wrote it;
(vii) By the statement of a deceased professional scribe, made in the ordinary c
ourse of business, that the signature on the document is that of a particular pe
rson:
A signature is also proved to have been made, if it is shown to have been made a
t the request of a person by some other person, e. g. by the scribe who signed o

n behalf of the executant;
(viii) By other circumstantial evidence.
[See Rami Bai vs. Life Insurance Corportion of India, AIR 1981 MP 89 and Manindra Kr. Dey Another vs. Mahendra Suklavaidya and Ors., 1999 (1) GLJ 220: (1999) 2 GLR 219].

[27] In the present case, the Defendant no.2, in whose presence the sale deed was executed by the Defendant no.3 and who was identified by the Defendant no. 1, was examined. As stated above, this Court also does not find the testimony of the Defendant no.2 shaken, doubtful or unreliable. No attempt was made by the appellant to question the veracity of the presence of the Defendant No.2 at the time of execution of the sale deed in 1975 or his statement about his witnessing of the execution of sale deed by the Defendant No.3 on being identified by the Defendant No.1 and presence of the other witnesses. Thus, the finding of the Court below that the sale deed had been duly proved on the basis of the evidence of the Defendant no.2 along with other circumstantial evidence does not require any interference by this Court.

[28] It is not the mandate of law as contended by the appellant that a disputed document can be proved only by examining the scribe or the attesting witnesses. As discussed above, if there be other evidences, failure to examine the scribe or the attesting witness would not be fatal in proving any document.

[29] Learned counsel appearing for the Respondents have also strenuously argued that it is now well settled principle of law that the Court exercising jurisdiction u/s 100 CPC ought not to re-appraise evidence and come to a different conclusion on finding arrived at by the Courts below, more particularly, the concurrent findings of facts unless such findings is perverse and has relied on the judgment rendered by this Court in Md.Majibur Rahman vs. Md.Sabed Ali and 42 ors. reported in 1996 (1) GLT 272.

This Court is also of the view that the finding as regards the execution of the sale deed in 1975 to have been proved, both by the learned Trial Court as well as by the learned Appellate Court, are based on certain evidences, even though neither the scribe nor the attesting witnesses have been examined. The learned Trial Court as well as learned Appellate Court have arrived at findings based on other reliable evidence on record, as stated above. This Court does not find the aforesaid concurrent findings of facts to be perverse or patently illegal and as such, this Court is not inclined to interfere with such concurrent findings of fact.

[30] As regards the contention of the appellant that the Defendant No. 1 was in adverse possession of the suit land since 1975, the learned Trial Court as well as the learned Appellate Court on the basis of the other evidence on record had come to a conclusion that his occupation of the suit land since 1975 is not proved. The plea of the appellant that in ignoring the material facts relating to the proceeding u/s 447 IPC and u/s 145 Cr.P.C. involving the plaintiffs and the Defendant No.1, the finding arrived at by the Courts below is vitiated cannot be accepted. This Court on examination of the evidence on record is also of the view that inspite of the aforesaid materials which the appellant had tried to relied upon, there are sufficient evidence on record to dispel the plea of the Defendant No. 1 that he was in adverse possession of the suit land since 1975. However, by referring to the aforesaid materials relating to the proceedings u/s 447 IPC and 145 Cr.P.C., the appellant would like this Court to reappreciate the evidence by taking into consideration the aforesaid materials and substitute with our own opinion, which in the view of this Court, is not permissible while exercising powers u/s 100 of CPC.

[31] As we come to our conclusions, we may remind ourselves of the decision of the Supreme Court rendered in Kondiba Dagadu Kadam v. Savitribai Sopan Gujar, (1999) 3 SCC 722:

4. & & & & & It has to be kept in mind that the right of appeal is neither a nat
l nor an inherent right attached to the litigation. Being a substantive statutor
y right, it has to be regulated in accordance with law in force at the relevant
time. The conditions mentioned in the section must be strictly fulfilled before
a second appeal can be maintained and no court has the power to add to or enlarg
e those grounds. The second appeal cannot be decided on merely equitable grounds
. The concurrent findings of facts howsoever erroneous cannot be disturbed by th
e High Court in exercise of the powers under this section. The substantial quest
ion of law has to be distinguished from a substantial question of fact. This Cou
rt in Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.1 held
that:
The proper test for determining whether a question of law raised in the case i
s substantial would, in our opinion, be whether it is of general public importan
ce or whether it directly and substantially affects the rights of the parties an
d if so whether it is either an open question in the sense that it is not finall
y settled by this Court or by the Privy Council or by the Federal Court or is no
t free from difficulty or calls for discussion of alternative views. If the ques
tion is settled by the highest court or the general principles to be applied in
determining the question are well settled and there is a mere question of applyi
ng those principles or that the plea raised is palpably absurd the question woul
d not be a substantial question of law.

5. It is not within the domain of the High Court to investigate the grounds on w
hich the findings were arrived at, by the last court of fact, being the first ap
pellate court. It is true that the lower appellate court should not ordinarily r
eject witnesses accepted by the trial court in respect of credibility but even w
here it has rejected the witnesses accepted by the trial court, the same is no g
round for interference in second appeal when it is found that the appellate cour
t has given satisfactory reasons for doing so. In a case where from a given set
of circumstances two inferences are possible, one drawn by the lower appellate c
ourt is binding on the High Court in second appeal. Adopting any other approach
is not permissible. The High Court cannot substitute its opinion for the opinion
of the first appellate court unless it is found that the conclusions drawn by t
he lower appellate court were erroneous being contrary to the mandatory provisio
ns of law applicable or its settled position on the basis of pronouncements made
by the Apex Court, or was based upon inadmissible evidence or arrived at withou
t evidence.

6. If the question of law termed as a substantial question stands already decide
d by a larger Bench of the High Court concerned or by the Privy Council or by th
e Federal Court or by the Supreme Court, its merely wrong application on the fac
ts of the case would not be termed to be a substantial question of law. Where a
point of law has not been pleaded or is found to be arising between the parties
in the absence of any factual format, a litigant should not be allowed to raise
that question as a substantial question of law in second appeal. The mere apprec
iation of the facts, the documentary evidence or the meaning of entries and the
contents of the document cannot be held to be raising a substantial question of
law. But where it is found that the first appellate court has assumed jurisdicti
on which did not vest in it, the same can be adjudicated in the second appeal, t
reating it as a substantial question of law. Where the first appellate court is
shown to have exercised its discretion in a judicial manner, it cannot be termed
to be an error either of law or of procedure requiring interference in second a
ppeal. This Court in Reserve Bank of India v. Ramkrishna Govind Morey2 held that
whether the trial court should not have exercised its jurisdiction differently
is not a question of law justifying interference.
1. AIR 1962 SC 1314: 1962 Supp (3) SCR 549.
2. (1976) 1 SCC 803 : AIR 1976 SC 830

[32] Keeping the aforesaid dictum in mind, this Court is of the view
that the concurrent findings of facts by the learned Trial Court as well as by t

he learned Appellate Court as regards the execution of the sale deed in 1975 and also as regards the claim of adverse possession by the Defendant no.1 do not seem to be perverse or unwarranted. It is not a case where the findings were erroneous being contrary to the mandatory provisions of law applicable or was based on inadmissible evidence or was arrived at without evidence. Therefore, this Court sitting in second Appeal would not interfere with the aforesaid concurrent findings of facts.

Further, the substantial question of law raised by the appellant in the present second appeal regarding the requirement of examining the scribe or the attesting witnesses to a disputed document has been already settled by a decision of this Court as well other High Courts which do not require any reconsideration and decided accordingly holding the execution of the sale deed in question to have been proved.

[33] In view of the above, this Court is of the view that present second appeal is devoid of merit and accordingly, stands dismissed.